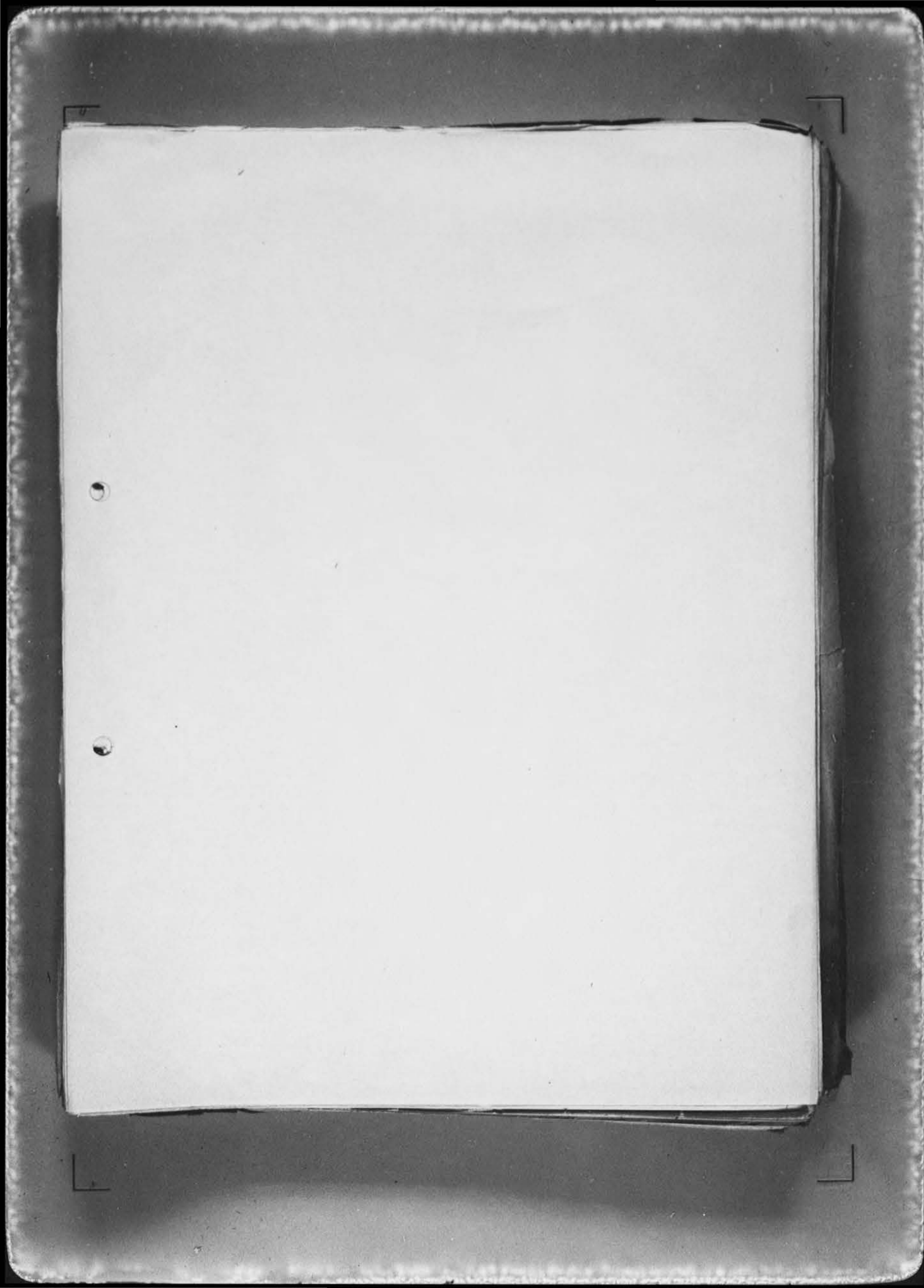


29 APRIL 1947

I N D E X  
of  
EXHIBITS

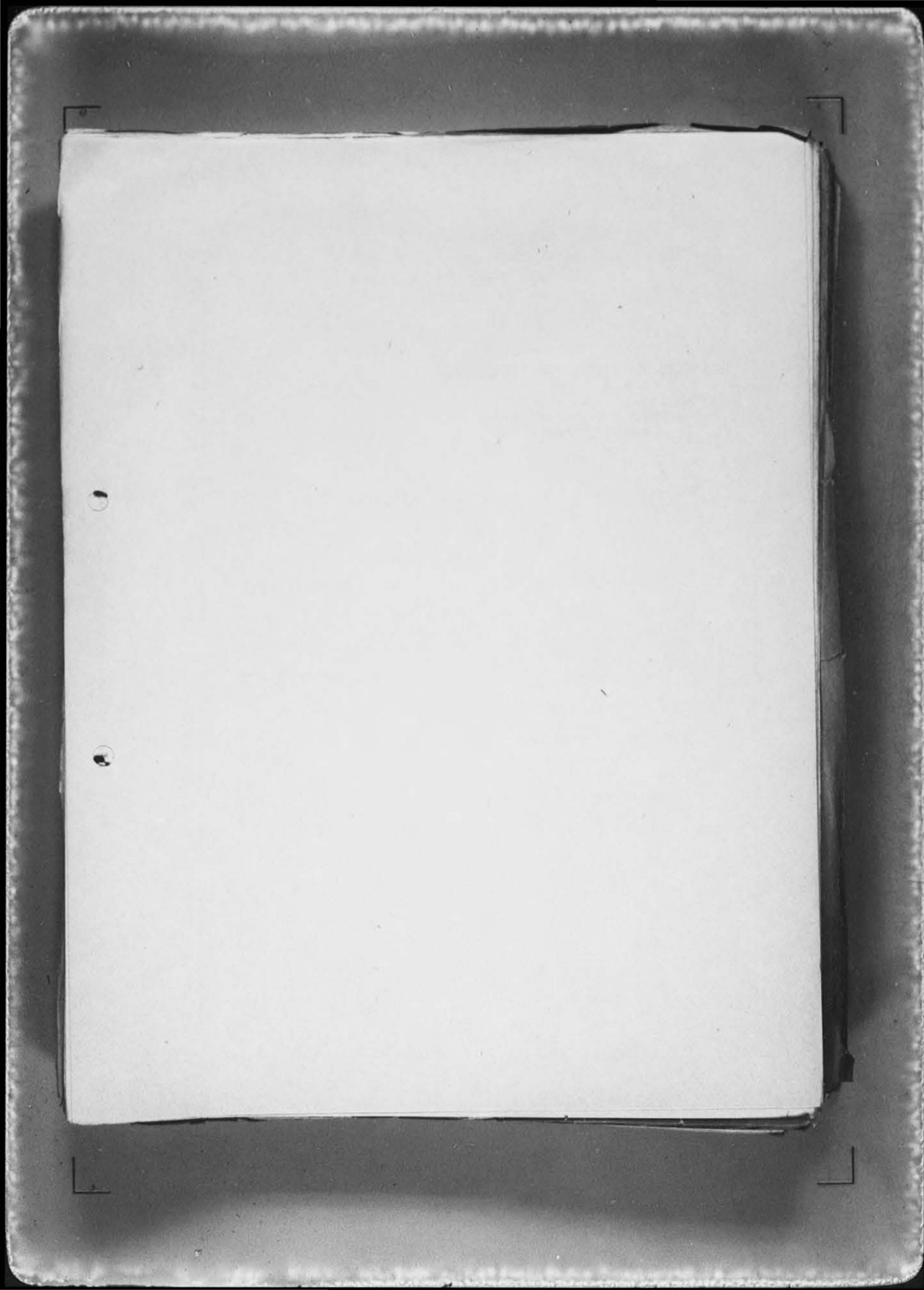
<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1305	2511		Report concerning the Association for Expediting the Abolition of Treaties		21040
1306	2512		Consul-General SHIGEMITSU's Telegram to Foreign Minister SHIDEHARA, dated 19 August 1929		21043
			<u>MORNING RECESS</u>		21055
959	2513		Report of the Asia Bureau of the Ministry of Foreign Affairs		21085
			(Rejected - p. 21085)		



29 APRIL 1947

I N D E X  
of  
WITNESSES

<u>Defense' witnesses</u>	<u>Page</u>
HATANO, Konichi (no examination)	21058
(Witness excused)	21063
<u>NOON RECESS</u>	21071
<u>AFTERNOON RECESS</u>	21080





1 Tuesday, 29 April 1947

2 - - -

3 INTERNATIONAL MILITARY TRIBUNAL  
4 FOR THE FAR EAST  
5 Court House of the Tribunal  
6 War Ministry Building  
7 Tokyo, Japan

8 The Tribunal met, pursuant to adjournment,  
9 at 0930.

10 - - -

11 Appearances:

12 For the Tribunal, same as before with the  
13 exception of: THE HONORABLE MR. JUSTICE NORTHCROFT,  
14 not sitting.

15 For the Prosecution Section, same as before.

16 For the Defense Section, same as before.

17 - - -

18 (English to Japanese and Japanese  
19 to English interpretation was made by the  
20 Language Section, IMTPE.)  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present  
4 except OKA, HIRANUMA and TOGO who are represented by  
5 counsel. The prison surgeon of Sugamo certifies that  
6 the three accused named are too ill to attend the  
7 trial today. The certificate will be recorded and  
8 filed.

9 Major Moore.

10 LANGUAGE ARBITER (Major Moore): Mr. President,  
11 with the Tribunal's permission, we present the follow-  
12 ing language corrections:

13 Exhibit No. 2505, record page 20,943, line  
14 24, delete the sentence beginning with the word  
15 "Later" and substitute "With the UMEZU-Ho Ying-Chin  
16 agreement various disputes between China and Manchukuo  
17 were settled for the time being."

18 Exhibit No. 2506, record page 20,965, line  
19 24, substitute "amicable relations with friendly  
20 nations" for "a close friendship with our allies."

21 Record page 20,966, line 1, substitute  
22 "friendly" for "the allied."

23 THE PRESIDENT: Thank you.

24 Mr. Cunningham.

25 MR. CUNNINGHAM: May it please the Tribunal,

1 this morning I continue reading on page 5 of defense  
2 document 952:

3 "The Regulations of Punishment of 'Chien-  
4 min' distributed by the National Anti-Japan Society.

5 "Article 1. In order to realize the breaking  
6 off of economic intercourse with Japan and to stop the  
7 sale of 'enemy goods' by 'Chien-shang' ('Wicked  
8 merchants') and the export of prohibited goods, this  
9 Society specially enacted the Regulations for the  
10 Punishment of 'Chien-shang'.

11 "Article 2. The methods of punishment come  
12 under the following three categories:

13 "(A) Honor Punishment:

14 "In the area where 'Chien-min' resides, as  
15 their names, permanent domiciles, photographs,  
16 offences, etc. shall be advertised in newspapers, and  
17 sign-boards of 'Chien-min' will be erected at places  
18 where they will attract public attention.

19 "(B) Public Right Punishment:

20 "The names and offences of 'Chien-min' will  
21 be reported to the Central Party and the Government,  
22 and they shall have public rights necessary for their  
23 business suspended.

24 "(C) Monetary Punishment." I will skip  
25 that and go to Article 3.



1           "Article 3. One who violates one of the  
2 following provisions, shall be punished according to  
3 this Regulation:

4           "(1) One who has not this 'enemy's goods'  
5 registered according to the provisions, shall have the  
6 goods confiscated and be punished with the 4th grade  
7 fine.

8           "(2) In case any person is found to have  
9 concealed Japanese goods or to have made a false report  
10 at the time of registration thereof, he shall have  
11 the goods confiscated and be punished with the 4th  
12 grade fine.

13           "(3) One who has sold Japanese goods with-  
14 out receiving a pass after registration thereof, shall  
15 have the goods confiscated.

16           "(4) In case any person is found deliberately  
17 not to have had his goods examined, he shall have the  
18 goods confiscated and be punished with the 2nd or 3rd  
19 grade fine.

20           "(5) For discrepancy between the Sales Report  
21 and the Registration List, the person responsible for  
22 shall be punished with the 3rd fine.

23           "(6) One who has smuggled or secretly sold  
24 Japanese goods shall have the goods confiscated and  
25 be punished with the 1st or 2nd grade fine."



Then skipping down to No. 5 on page 8:

1 "Article 5. Any person who in case when the  
2 fine imposed upon him has misrepresented that has not  
3 the ability to pay it or has not paid it may be  
4 detained by the neighboring Police Bureau which will  
5 be informed of such a person by the Anti-Japan Society  
6 at the appropriate place.

7 "Days under detention shall be calculated  
8 at one yuan a day.

9 "Article 7. The present Regulations shall be  
10 promulgated and put into operation on the day when  
11 passed at the meeting of the Executives of National  
12 Anti-Japan Society."

13 On page 10 of defense document 952 we skip  
14 down to C at the bottom of the page under "Anti-  
15 Japanese Slogans."

16 "Those concerning diplomacy.

17 "14. Abolish all the Unequal Treaties  
18 between China and Japan.

19 "15. Fellow countrymen! Be united and back  
20 our diplomacy!

21 "16. Nullify all Japanese rights in China!

22 "17. Execute revolutionary diplomacy!

23 "18. Diplomacy is backed by the armed  
24 people!

1 "19. Without withdrawal of Japanese armed  
2 forces, negotiations on the Tsinan Incident cannot be  
3 opened.

4 "20. Compensate us for loss in the Tsinan  
5 Incident.

6 "21. Recover us Manchuria and Mongolia!

7 "22. Rights of constructing the Changchun-  
8 Tseli and the Kirin-Hailung Railways cannot be con-  
9 ceded to Japan.

10 "23. Punish the leaders of the tragic Incident  
11 in Tsinan!

12 "D. Those concerning breaking off the  
13 economic intercourse.

14 "24. We would rather die than use 'Enemy's  
15 goods'.

16 "25. Japanese paper money should not be  
17 used.

18 "26. Breaking off economic intercourse shall  
19 be executed.

20 "27. Boycott Japanese goods!

21 "28. Strictly prevent 'chien-shang' from  
22 smuggling Japanese goods!

23 "29. Cutting economic intercourse is suffici-  
24 ent to seal the fate of Japanese imperialists.

25 "30. Execute tariff autonomy!

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1 "31. Use home products in order to boycott  
2 Japanese goods.

3 "32. Boycott Japanese goods by promoting our  
4 industries!

5 "33. Don't supply raw materials to Japan!

6 "34. Never be employed by Japanese!

7 "35. Don't convey Japanese goods!

8 "36. Don't board Japanese ships!

9 "37. Patronage of home industries is a  
10 step forward in the anti-Japan task.

11 "38. Withdraw your money from the Bank of  
12 Japan!

13 "E. Others.

14 "39. Fellow countrymen! Be united and  
15 oppose Japan with one accord!

16 "40. Three cheers for the success of anti-  
17 Japan movement!"

18 We next offer defense document No. 677  
19 which contains supplemental regulations issued by  
20 anti-Japanese Society of Tientsin.

21 THE PRESIDENT: Brigadier Quilliam.

22 BRIGADIER QUILLIAM: May it please the  
23 Tribunal, this document purports to be a set of regu-  
24 lations in connection with the anti-Japanese Society.  
25 Their source: is not disclosed nor is there anything



1 to indicate whether they are authentic. The prosecu-  
2 tion submits that the document is objectionable on  
3 precisely the same grounds as were upheld by the  
4 Tribunal yesterday in connection with a similar docu-  
5 ment, No. 872, and it asks that the document be  
6 rejected.

7 THE PRESIDENT: It may be that the existence  
8 of the boycott and its aims and effects are not  
9 seriously questioned by the prosecution. If that be  
10 the case, much of this material is repetitive. Is  
11 the attitude of the prosecution simply that the boy-  
12 cott is irrelevant?

13 Brigadier Quilliam.

14 BRIGADIER QUILLIAM: May it please the  
15 Tribunal, the prosecution does, of course, submit that  
16 this evidence is material, but I am unable, I have  
17 no authority to admit that the evidence in connection  
18 with the boycott is correct.

19 THE PRESIDENT: You don't question Lord  
20 Lytton's findings?

21 BRIGADIER QUILLIAM: May it please the  
22 Tribunal, I don't think they can be questioned. The  
23 point I endeavored to make yesterday afternoon was  
24 that the matter was covered so fully and so authoritative-  
25 ly in the Lytton Report that any other evidence was

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23 point I endeavored to make yesterday afternoon was  
24 that the matter was covered so fully and so authentive-  
25 ly in the Lytton Report that any other evidence was



1 unnecessarily repetitive.

2 THE PRESIDENT: That is as to the existence  
3 of the boycott, its aims and effects, but not as to  
4 its justification or lack of justification.

5 BRIGADIER QUILLIAM: No, may it please your  
6 Honor.

7 THE PRESIDENT: I don't think there is much  
8 difference between you except on the question of  
9 justification and we may not need much evidence on  
10 that. It is mostly a matter for argument, I should  
11 say.

12 MR. CUNNINGHAM: Of course, your Honor, I  
13 don't agree it is a matter of argument; I think it is  
14 a matter of proof. I think if the prosecution is  
15 willing to concede that we have established now the  
16 fact that the boycott existed and that that boycott  
17 constituted economic warfare and that economic warfare  
18 was one of the major causes of the conflict between  
19 China and Japan, then we need not offer any further  
20 proof.

21 THE PRESIDENT: Well, it is clear there  
22 was a boycott. The question is whether the action  
23 of the Japanese was justified by the existence of  
24 the boycott, and that does not appear to me to require  
25 much evidence. It is a matter for argument, really,

unnecessarily repetitive.

1 THE PRESIDENT: That is as to the existence  
2 of the boycott, its aims and effects, but not as to  
3 its justification or lack of justification.  
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5 BRIGADIER QUILLIAM: No, may it please your  
6 Honor.

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1 on trestles and that kind of thing. I am trying to  
2 reduce the evidence but not beyond what is necessary  
3 to enable you to put a proper defense.  
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1 on treaties and that kind of thing. I am trying to  
2 reduce the evidence but not beyond what is necessary  
3 to enable you to put a proper defense.

1 MR. CUNNINGHAM: Your Honor, I disagree  
2 with you thoroughly on your premise that it may not  
3 be an important matter. I feel that economic  
4 considerations are the major considerations for war  
5 and that this issue of whether or not the economic  
6 consideration of boycott constituted one of the  
7 major factors of Japan-China conflict is very  
8 important; and I think, until the evidence becomes  
9 cumulative and not repetitive, we ought to be per-  
10 mitted to offer what additional evidence we have to  
11 substantiate our contentions.

12 THE PRESIDENT: My difficulty is that you  
13 are piling on proof of matters that are not really  
14 being challenged and, so, unnecessarily taking up  
15 time. However, my colleagues and I, having regard  
16 to the lack of authority for this last document  
17 tendered, uphold the objection and reject the docu-  
18 ment. That is a majority decision.

19 MR. CUNNINGHAM: I now offer defense docu-  
20 ment No. 678 which relates to the regulations of  
21 anti-Japanese Society, dated January 14, 1929,  
22 which follow the provisions set out in defense  
23 document 677.

24 THE PRESIDENT: Brigadier Quilliam.

25 BRIGADIER QUILLIAM: May it please the Tri-



1 bunal, the prosecution objects to this document  
2 which is exactly on all fours with the previous  
3 document.

4 MR. CUNNINGHAM: Well, I urge, your Honor,  
5 that this document follows in line chronologically  
6 and principally with the other document and that  
7 it all forms a chain of evidence which shows the  
8 continuity of activity of the Chinese Government  
9 and different factions towards arousing Japanese  
10 antagonism.

11 THE PRESIDENT: Personally, I am prepared  
12 to accept everything the Lytton Commission decides  
13 in your favor, and I think most of my colleagues are  
14 of the same opinion, but this adds nothing to that.  
15 The objection is upheld and the document rejected,  
16 by a majority.

17 MR. CUNNINGHAM: We now offer defense docu-  
18 ment No. 1305, which is a report to the Home Ministry  
19 of Japan by Charge d'Affairs in China concerning the  
20 action accelerating the anti-Japanese activities and  
21 the additional measures taken to promote the boycott  
22 of Japanese goods in China.

23 THE PRESIDENT: Brigadier Quilliam.

24 BRIGADIER QUILLIAM: May it please the Tri-  
25 bunal, so far as I can see, this document contains

1 no reference to the subject of boycott. It appears  
2 to be connected with the establishment of a Chinese  
3 society having as its object, apparently, the ex-  
4 pediting of the abolition of treaties. It may,  
5 perhaps, be assumed that this refers to treaties  
6 effecting Japan, but that is not stated. It is  
7 submitted that there is nothing to suggest that  
8 this was not a perfectly proper and patriotic ob-  
9 ject which was no concern of Japan's. It is, there-  
10 fore, submitted that the document is irrelevant and  
11 should be rejected.

12 THE PRESIDENT: Mr. Cunningham.

13 MR. CUNNINGHAM: I suggest, your Honors,  
14 that the anti-Japanese attitude in boycott is very  
15 directly tied in with the proposal of the Chinese  
16 officials to expedite the abolition of treaties,  
17 that this matter has a very direct bearing, and that  
18 your Honor's suggestion about being more concerned  
19 about treaties than boycott fits in with the appli-  
20 cation of this document.

21 THE PRESIDENT: At no time did I say that we  
22 were more concerned with treaties than with boycotts.  
23 What I did say or suggest was, we were well satis-  
24 fied with the existence of the boycott, its aims  
25 and effect, and that it may have some bearing on

1 Japanese treaty rights and may have been a justifi-  
2 cation for the Japanese action, but the real ques-  
3 tion was whether there was justification.

4 MR. CUNNINGHAM: I suggest that this docu-  
5 ment is aimed in that direction, and this is one of  
6 the best that we can offer.

7 THE PRESIDENT: By a majority, the Court  
8 overrules the objection and admits the document.

9 CLERK OF THE COURT: Defense document  
10 1305 will receive exhibit No. 2511.

11 (Whereupon, the document above re-  
12 ferred to was marked defense exhibit No.  
13 2511 and received in evidence.)

14 MR. CUNNINGHAM (Reading):

15 "Report concerning the association for  
16 Expediting the Abolition of Treaties.

17 "To: Baron SHIDEHARA, Kijuno, the Home  
18 Minister.

19 From: HORIUCHI, Kensuke, the Extraordinary  
20 Chargé d'Affaires in China, August  
21 14, 1929.

22 "I have reported the renaming of the local  
23 anti-Japanese Association to the Peking National  
24 Association for Expediting the Abolition of Treat-  
25 ies, by telegram No. 783. After that, however, the



1 Peking Branch of the Nationalist Party planned to  
2 establish separately an Association for Expediting  
3 the Abolition of Treaties with the present member  
4 of the following five bodies -- i.e., Laborers'  
5 Union, Students' Federation, Women's Association,  
6 Farmer's Association and the Merchant's Association  
7 which were under the influence of the Nationalist  
8 Party. As a result, all staff members of the former  
9 Anti-Japanese Association, resigned on July 19th.  
10 Accordingly, the said five bodies opened a joint  
11 conference on the 20th of the same month, at which  
12 they decided to establish a Preliminary Committee  
13 for Association for expediting the Abolition of  
14 treaties. The General Assembly of the Preliminary  
15 Conference was held on the 22nd of the same month,  
16 with Mr. Chang Tai-chen and Mr. Sung Shao-hen repre-  
17 senting the Merchants' Association, Mr. Hsu Shu-  
18 chuan and Mr. Chang Hsiao-chu representing the  
19 Laborer's Union, Mr. Ma Feng-wei and Mr. Tan Pao-  
20 shen representing the Farmers' Association, Mr.  
21 Hsu Hsuen-hao and Mr. Hu China-chun representing  
22 the Students' Federation, Miss Li Hui-wen represent-  
23 ing the Women's Association and Mr. Wang Cheng-i  
24 and Mr. Han Shih-yuen representing the People's  
25 Training Association, and so forth, attending.

1 The following items were decided at the assembly:

2 "(1) All operations should be suspended  
3 until the establishment of the Association for  
4 Expediting the Abolition of Treaties.

5 "(2) To take over the respective organs  
6 related with the Anti-Japanese Association.

7 "(3) The allotment of position. After-  
8 wards, the Preliminary Committee determined to  
9 establish a Permanent Committee of 5 representa-  
10 tives selected from three persons from each of the  
11 said bodies." Skipping the names.

12 We now offer defense document No. 1306,  
13 which is a report of Consul-General SHIGEMITSU to  
14 Foreign Minister on the 19th of August, 1929, show-  
15 ing the anti-Japanese organizations were operating  
16 through the political subdivisions of China and  
17 were not merely voluntary organizations of individ-  
18 ual merchants and citizens.

19 THE PRESIDENT: Brigadier Quilliam,

20 BRIGADIER QUILLIAM: May it please the Tri-  
21 bunal, this is another document dealing with the  
22 subject of boycott. It is dated 1929. The prose-  
23 cution objects to the document on the ground that,  
24 in view of the Lytton Report, this constitutes un-  
25 necessary repetition.

1 MR. CUNNINGHAM: The document is short and  
2 snappy, and I think that it will throw some light  
3 on the subsequent developments from the other docu-  
4 ment which was read.

5 THE PRESIDENT: By a majority, the objection  
6 is overruled and the document admitted.

7 CLERK OF THE COURT: Defense document No.  
8 1306 will receive exhibit No. 2512.

9 (Whereupon, the document above re-  
10 ferred to was marked defense exhibit No.  
11 2512 and received in evidence.)

12 MR. CUNNINGHAM: (Reading)

13 "To: Foreign Minister SHIDEHARA.

14 "From: Consul-General SHIGEMITSU.

15 "According to the information received at  
16 this office the original of the secret order from  
17 the government of Chiangsu Province to the head of  
18 each province under its control (as the telegram of  
19 9 August) has the same content as the instruction  
20 No. 648 of the nationalist government to the Fukien  
21 Province government referred to in the telegrams of  
22 Consul-General in Fu-Chow to your excellency of  
23 Numbers 131 and 132 and its main points are as fol-  
24 lows:

25 "1. Although it is inevitable that the



1 economic breach with Japan should be continued  
2 rigorously, the lynching of the anti-Japanese organ-  
3 izations themselves of the search" --

4 THE PRESIDENT: "Launching."

5 MR. CUNNINGHAM: -- "attacks and confis-  
6 cation of Japanese goods or of interference should  
7 be ceased.

8 "2. From now on the boycott against Japanese  
9 goods should be carried on by each merchant's associ-  
10 ation on their own responsibility.

11 "3. The merchant's association concerned  
12 should be punished severely when it does not arrest  
13 and punish the people who handle the Japanese goods."  
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1           MR. CUNNINGHAM: We wish to refer at this  
2 time to defense document No. 557 or exhibit 2391,  
3 which shows that the measures taken against the  
4 possibility of foreign landowners was one of the  
5 most drastic measures in the anti-Japanese movement.  
6 This is an official document of the Foreign Office.

7           I now offer defense document No. 357 for  
8 the purpose of showing the anti-Japanese cancella-  
9 tions in China, particularly concerning the sugar  
10 trade.

11           THE PRESIDENT: Brigadier Nolan.

12           BRIGADIER NOLAN: This document to which  
13 the prosecution objects, may it please the  
14 Tribunal, purports to give the substance in a  
15 newspaper of certain cables received by Japanese  
16 companies from their branch offices. I submit that  
17 it has no probative value and should be rejected  
18 by the Tribunal.

19           MR. CUNNINGHAM: I wish to emphasize in  
20 this document the second and third paragraphs only.  
21 It is short and has a direct bearing upon the  
22 follow-up on the anti-Japanese movement and boycott  
23 in China and has a 1931 date, later than other  
24 documents.

25           THE PRESIDENT: By a majority the Court

upholds the objection and rejects the document.

1           MR. CUNNINGHAM: We now offer defense  
2 document 359, which is an article from the Japan  
3 Chronicle, a foreign newspaper, which, my associates  
4 tell me, sheds the foreign point of view about the  
5 controversy between Japan and China and should  
6 have probative value from that standpoint alone.

7           THE PRESIDENT: By a majority the Court  
8 upholds the objection and rejects the document.

9           MR. CUNNINGHAM: We now offer defense  
10 document 368, which is a press report which indi-  
11 cates that other nationals were mistreated by armed  
12 bandits in and near Peiping during July, 1931.

13           BRIGADIER NOLAN: May it please the  
14 Tribunal, I submit that this document is totally  
15 and wholly irrelevant.

16           MR. CUNNINGHAM: I submit that it just  
17 indicates in another direction that the Chinese  
18 Government was not offering protection to the  
19 nationals of other nations and it ties in.

20           THE PRESIDENT: The Tribunal upholds the  
21 objection and rejects the document.

22           MR. CUNNINGHAM: We next offer defense  
23 document 373, which is an excerpt from the article  
24 in the Japan Chronicle concerning the effect of  
25



1 Thorburn case, which has become famous, I under-  
2 stand.

3 THE PRESIDENT: Brigadier Nolan.

4 BRIGADIER NOLAN: May it please the  
5 Tribunal, we object to this document as being  
6 irrelevant. It purports to state what appears in  
7 the London newspaper about an incident that has  
8 nothing to do with this case.

9 THE PRESIDENT: This is another matter  
10 purely between the English and the Chinese. A  
11 similar document was rejected yesterday. The  
12 Tribunal upholds the objection and rejects this  
13 document.

14 MR. CUNNINGHAM: I don't believe, your  
15 Honor, that it is a matter just between the Bri-  
16 tish and the Chinese when the rights of nationals --

17 THE PRESIDENT: If this continues, I  
18 will have to deal with you. You are becoming  
19 very offensive, and I do not tolerate offensive  
20 counsel.

21 MR. CUNNINGHAM: I now offer defense  
22 document No. 376, which shows the Chinese activities  
23 concerning foreign nationals was arousing the  
24 indignation of the British Government as well as  
25 the Japanese.

1 THE PRESIDENT: Brigadier Nolan.

2 BRIGADIER NOLAN: May it please the  
3 Tribunal, this is a further reference from the  
4 British press about the Thorburn Case with which,  
5 I submit, this Tribunal is not interested.

6 MR. CUNNINGHAM: I merely wish to show,  
7 your Honor, by these documents that Japan was  
8 not asking for any more protection than the nationals  
9 of other countries were expecting from China  
10 and that other countries were exacting care and  
11 protection of their nationals from China, and  
12 Japan had exactly the same right to demand the  
13 same consideration.

14 THE PRESIDENT: The objection is upheld  
15 and the document is rejected.

16 MR. CUNNINGHAM: We next offer defense  
17 document No. 391, which is an article from the  
18 Japan Chronicle of the 2nd of August, 1931, which  
19 shows that the Chinese propaganda was making it  
20 difficult to obtain the real facts and that subter-  
21 fuge was being employed by the administration.

22 THE PRESIDENT: Brigadier Nolan.

23 BRIGADIER NOLAN: If it please the Tribunal,  
24 this document purports to state what appeared in  
25 a Chinese newspaper published in Canton quoting

1 an unnamed important party official. We submit  
2 that the document should be rejected.

3 THE PRESIDENT: The Court upholds the  
4 objection and rejects the document.

5 MR. CUNNINGHAM: We next offer defense  
6 document 393, which is a report of instances of  
7 kidnapping of sixty Japanese women and their em-  
8 ployment as slaves in China.

9 THE PRESIDENT: Brigadier Nolan.

10 BRIGADIER NOLAN: May it please the  
11 Tribunal, this is a press release from the Foreign  
12 Office. It purports to quote a report made by a  
13 Japanese consul-general at Foochow to the Foreign  
14 Office. We submit that it has no probative value  
15 and should be rejected by the Tribunal.

16 MR. CUNNINGHAM: I submit that it is just  
17 another one event in the chain of events which  
18 showed the gradual development in China and one  
19 of the causes of disagreements and later conflicts  
20 between the Chinese and Japanese forces.

21 THE PRESIDENT: By a majority the Court  
22 upholds the objection and rejects the document.

23 MR. CUNNINGHAM: We now offer defense  
24 document No. 441, an article from the Japan Chronicle  
25 of the 14th of August, 1931, showing the outrageous



1 procedure employed in Shanghai towards Japanese  
2 merchants and goods.

3 THE PRESIDENT: Brigadier Nolan.

4 BRIGADIER NOLAN: May it please the  
5 Tribunal, we object to the introduction of this  
6 document. It is merely a reprint of editorial  
7 comment appearing in another Japanese paper and  
8 is, we submit, nothing more than propaganda.

9 MR. CUNNINGHAM: I might suggest that  
10 this is not a Japanese press. It is a British  
11 press, or a British-owned paper reporting what  
12 it considers the news of the day at that time.

13 THE PRESIDENT: By a majority the Court  
14 upholds the objection and rejects the document.

15 MR. CUNNINGHAM: We now offer defense  
16 document 761 from the Tokyo Shimbun, which shows  
17 that several Japanese cafe girls were murdered  
18 by Chinese rioters.

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1 THE PRESIDENT: Brigadier Nolan.

2 BRIGADIER NOLAN: May it please the  
3 Tribunal, we submit that this document should be  
4 rejected, as have others of the same kind which have  
5 been introduced this morning by the defense.

6 I would draw the Tribunal's attention to  
7 the word "several" that appears in the fifth line  
8 from the bottom. It seems to be rather vague.

9 MR. CUNNINGHAM: I consider the fact as the  
10 important thing and not particularly the number,  
11 and it does appear that this is a significant  
12 report in the light of what developed.

13 THE PRESIDENT: By a majority the Court  
14 upholds the objection and rejects the document.

15 MR. CUNNINGHAM: If your Honor please, it  
16 has been suggested by several defense counsel that  
17 when one or more of the members of the Tribunal feel  
18 a document has probative value, it should be accep-  
19 ted for what it is worth. I know in our country  
20 we have a rule in our court that if one or more of  
21 the judges feel a matter should be heard, it should  
22 be considered, and it seems to be far more fair than  
23 accepting evidence on a majority ruling.

24 THE PRESIDENT: Independently of the  
25 Charter, I express no opinion on the merits, but

1 the Charter says that these questions shall be  
2 decided by a majority. I have yet to hear of a  
3 national court anywhere in the world which is con-  
4 trolled by a minority.

5 MR. CUNNINGHAM: I wish to call your atten-  
6 tion, your Honor, that on a final decision that is  
7 perhaps right, but that on a matter of admissibility  
8 of evidence, which is not a major decision but a  
9 matter only which involves the right of an individual  
10 to be heard fully on everything in his favor, I think  
11 that rule does not apply; and we have the Charter --

12 THE PRESIDENT: Evidence is always received  
13 or rejected during the course of the trial and never  
14 reserved until the end of the trial except by a  
15 Judge who cannot make up his mind. The Charter binds  
16 us, in any event. We will observe the Charter.

17 MR. CUNNINGHAM: I was in the middle of  
18 the sentence when the light cut me off. I wonder  
19 if I can complete the thought I had in bringing the  
20 matter up.

21 In the first place, in our United States  
22 Supreme Court if one or two members of the Tribunal  
23 feel that a matter should be heard on certiorari,  
24 it is heard. That is a preliminary matter and I  
25 liken it to the matter of introduction of evidence



in this matter.

1           In the second place, in a court martial  
2 it is the law member of the court, one member, who  
3 passes on the admissibility of the evidence, and  
4 that controls. If he thinks it admissible, I be-  
5 lieve that binds the Court.  
6

7           THE PRESIDENT: This is a trial and not  
8 an application for a prerogative writ, nor is it  
9 a court martial. There are eleven law members of  
10 this Court, not one. The debate is useless in  
11 view of the attitude of my colleagues, some of whom  
12 are restless under the strain of hearing you on such  
13 a point.

14           MR. CUNNINGHAM: Your Honor, this is a very  
15 serious proposition as far as I am concerned and, I  
16 know, as far as the rest of the members of the defense  
17 are concerned. It appears that there was a different  
18 rule in application upon the admission of the Prose-  
19 cution's evidence than upon ours and that is why I  
20 would like to clear up that difficulty, so that we  
21 may have a little better understanding in introducing  
22 and preparing our evidence.

23           THE PRESIDENT: This debate is closed.

24           MR. CUNNINGHAM: We next offer defense  
25 document No. 979, which is a telegram despatched

1 from Nanking November 1, 1935, to Foreign Minister  
2 HIROTA concerning the peace proposals between  
3 Chiang Kai-shek and ARIOSHI.

4 I withdraw that offer and go to the presen-  
5 tation of defense document 840, which is a state-  
6 ment issued by the Information Bureau of the Japanese  
7 Government concerning the Sian Incident.

8 THE PRESIDENT: Brigadier Nolan.

9 BRIGADIER NOLAN: If it please the Tribunal,  
10 this is another press release, being the account  
11 of a conversation between the Chinese ambassador  
12 and the Foreign Minister regarding a report from  
13 an adviser as to the state of health of a Chinese  
14 general. It then purports to set out the reply  
15 of the Foreign Minister, which is based upon what the  
16 Foreign Minister had read in the papers.

17 MR. CUNNINGHAM: This is a preliminary  
18 document which is a foundation for future documents  
19 which describe in detail this incident, which is  
20 most important in the vital issues of this case.

21 THE PRESIDENT: By a majority the objection  
22 is upheld and the document rejected.

23 MR. CUNNINGHAM: We offer now defense docu-  
24 ment No. 986, which is a weekly report issued in  
25



1 August 1937 of the Information Bureau of the Japan-  
2 ese Government, which sets forth the Japanese policy  
3 concerning the incidents causing disturbance at that  
4 time and suggestion for their solution.

5 THE PRESIDENT: Brigadier Nolan.

6 BRIGADIER NOLAN: May it please the Tribunal,  
7 defense document 986, I submit, may be summed up  
8 by saying that it is a press release stating why  
9 the China Incident broke out.

10 THE PRESIDENT: Mr. Cunningham.

11 MR. CUNNINGHAM: I submit that this is an  
12 official report of the Japanese Government declara-  
13 tion, by the Information Bureau, on the policy of  
14 the Japanese Government towards the incidents, and  
15 is certainly relevant to the issues in this case.

16 THE PRESIDENT: By a majority the Court  
17 upholds the objection and rejects the document.

18 We will recess for fifteen minutes.

19 (Whereupon, at 1045, a recess was  
20 taken until 1100, after which the proceedings  
21 were resumed as follows:)  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Cunningham.

4 MR. CUNNINGHAM: If your Honor please, we are  
5 about to finish now the presentation of the documents  
6 on the question of effect of boycott upon the relations  
7 between Japan and China. The purpose of the evidence  
8 was to show that the success of the treaties depended  
9 upon the possibility of developing cooperative  
10 relationships in China based on goodwill and under-  
11 standing between the two nations; that bitter outbreaks  
12 against foreign interests in various parts of China  
13 marked the growth of the nationalist spirit, but it  
14 was in Manchuria that the most serious repercussions  
15 occurred.

16 Now I should like to offer my last document  
17 in this division, No. 1112, the comments of Mr. KAWAI,  
18 Chief of the Information Bureau of the Japanese Govern-  
19 ment during the conflicts between the Japanese and the  
20 Chinese, and the extent to which the Chinese propaganda  
21 distorted the facts.

22 THE PRESIDENT: Brigadier Nolan.

23 BRIGADIER NOLAN: May it please the Tribunal,  
24 this is, I submit, a press release from the Board of  
25 Information, and contains the opinion of Mr. KAWAI as

1 to the aims and purposes of Chinese propaganda. I  
2 submit that the Tribunal is not interested in the  
3 opinion of this gentleman on these matters, and that  
4 the document should be rejected.

5 MR. CUNNINGHAM: If the prosecution holds  
6 that the defendants are bound only by their own state-  
7 ments and not bound by the statements of any other mem-  
8 bers of the government during their term of office,  
9 then perhaps what the prosecution says is true. But  
10 if these accused are held for what their government  
11 in power during their regime did, then they are entitled  
12 to be heard on what the subordinates said at the time  
13 concerning the policy of these individuals.

14 THE PRESIDENT: The Tribunal upholds the  
15 objection and rejects the document.

16 Dr. KANZAKI.

17 DR. KANZAKI: Next, the defense wishes to  
18 summon to the court the witness HATANO, Konichi. Defense  
19 Counsel KOKUBU will take charge of the witness.

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HATANO

1 K O N I G H I H A T A N O, called as a witness  
2 on behalf of the defense, took the stand.

3 MR. KOKUBU: Now, for certain reasons we are  
4 unable to get the signature of the witness on this  
5 affidavit, so it is requested that we could directly  
6 question him instead of submitting the affidavit.

7 THE PRESIDENT: Show him the affidavit and  
8 ask him whether the contents of that are true. That  
9 will be sufficient. I mean, the unsigned document.  
10 Apparently one was drafted and submitted to him and  
11 he wouldn't sign it. Let the draft be produced to him  
12 now.

13 MR. KOKUBU: We endeavored to try to draft  
14 the affidavit, but for various reasons we succeeded  
15 to draft only a part of the affidavit, and, therefore,  
16 we are unable to complete the affidavit.

17 THE MONITOR: We were not able to complete  
18 the affidavit. We only have a part of the draft.

19 THE PRESIDENT: Oh, that is not sufficient  
20 for our purposes. This would be a very easy way to  
21 break the Court's rule. There are no exceptional  
22 circumstances warranting any departure from the rules  
23 laid down. At least, none have been disclosed to us.

24 MR. CUNNINGHAM: Your Honor, I presumed it was  
25 clear that the witness had prepared his affidavit,



1 statement, and was the witness proposed in this phase  
2 of the case. But the witness refused to make a sworn  
3 statement and we asked that the witness be called to  
4 testify in open court by question and answer.

5 THE PRESIDENT: Obviously you did not hear  
6 what I said, nor did you hear what the Japanese counsel  
7 just told us.

8 If the affidavit were prepared, in the Court,  
9 but not signed, we would ask that it be handed to him  
10 and that he say whether it is true or not. But we  
11 were told the affidavit was prepared in part only and  
12 for some unknown reason -- some reason unknown to us --  
13 it wasn't completed.

14 If this man has a written statement of any  
15 kind, whether sworn or unsworn, let it be handed to  
16 him and let him say whether it is true or not and we  
17 will receive it in evidence, subject to any objections.

18 MR. KOKUBU: Your Honor, please, we tried to  
19 question the witness and draft the affidavit. How-  
20 ever, what we have finished is only a small part and  
21 what we wish to obtain witness' testimony on has not  
22 been included in this statement, partial statement.  
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HATANO

1 THE PRESIDENT: Do you mean to tell us you  
2 are calling a witness and you don't know what he is  
3 going to say, calling a witness for the defense and  
4 you don't know what he is going to say? Witnesses  
5 frequently are called against their will but you know  
6 very well what they are going to say; you know from  
7 their position or something of that kind.

8 If this man is a necessary witness and he won't  
9 give you an affidavit, well, you are at liberty to  
10 call him here. If that is the position you haven't  
11 made it clear yet.

12 MR. KOKUBU: The witness did not like to  
13 sign his affidavit -- to make affidavit, and though  
14 we tried to summon him frequently we have been unable  
15 to do so, and that was the reason why the affidavit  
16 has not been drafted. What the defense wishes to get  
17 in the testimony of the witness is clear so far as we  
18 are concerned, that is the overall explanation of the  
19 activity of the Chinese Communist Party.

20 For these reasons we have been unable to  
21 draft the witness' affidavit, so we should like to ob-  
22 tain the special permission from the Court to directly  
23 question the witness in open court.

24 THE PRESIDENT: I suppose you are suggesting  
25 intimidation although you haven't used the word. Do

HATANO

1 be frank with us.

2 MR. KOKUBU: I could not understand the  
3 purport of your Honor's statement.

4 THE PRESIDENT: I could not make myself  
5 clearer; I am not going to try.

6 MR. KOKUBU: This witness is fearful of mak-  
7 ing any statement concerning the Chinese Communist  
8 Party, and for that reason we wish that the direct  
9 questioning of this witness in open court may be per-  
10 mitted, and that was why we had asked for the leave.

11 THE PRESIDENT: How absurd that seems to us.  
12 He is prepared to make the statements in court but he  
13 is not prepared to put them down in affidavit. He is  
14 under subpoena throughout. What can be the difference  
15 in the consequences to him whether he puts it in an  
16 affidavit or swears it here? Isn't it absurd to sug-  
17 gest that he is prepared to state here in open court  
18 what he is not prepared to put in an affidavit? If  
19 he says he is, should we be prepared to respect his  
20 whim? I wouldn't.

21 MR. KOKUBU: It is our supposition that the  
22 witness is also fearful to make free statement even  
23 in open court.

24 THE PRESIDENT: I am asked to inquire what  
25 is the witness' reason. I do so.



1           MR. KOKUBU: Mr. Witness, we presumed that  
2 you are fearful to make frank statements concerning the  
3 activities of the Chinese Communist Party because your  
4 statement necessarily will be connected with the --  
5 might be connected with the Soviet Communistic Party,  
6 or Comintern, or even Soviet Socialistic Republic, and  
7 please state frankly the reason why you are unwilling  
8 to make free statement.

9           THE PRESIDENT: You have stated it for him, but  
10 let's hear him.

11          THE WITNESS: I have no such idea.

12          MR. KOKUBU: We tried to ask you to come out --  
13 we asked you frequently to come out and you still failed  
14 to do so, and so it was our supposition that the reason  
15 why you failed to come out was that you felt uneasiness.  
16 Was our supposition then wrong?

17          THE MONITOR: We asked you frequently to come  
18 out, that is, come over to our office, but you failed  
19 to do so, and we felt that your reluctance was due to  
20 uneasiness about making a frank and complete statement  
21 about your knowledge. Was our presumption wrong?

22          THE PRESIDENT: We are not going to compel  
23 him to answer. He is useless to you in his present  
24 state of mind. You had better take him out of the box.  
25 We will stand him down. We are spending valuable time

1 and the man is not prepared to talk.

2 He is released on the usual terms. He may be  
3 recalled at any stage when he is of any use to the  
4 defense.

5 (Whereupon, the witness was excused.)

6 MR. CUNNINGHAM: If the Tribunal please, we  
7 now offer the documents concerning the Communist activ-  
8 ities in China. The language difficulty seems to have  
9 interfered with the proper presentation of this wit-  
10 ness, but we will try to clarify it at noon and hold  
11 the witnesses while they are here.

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1 THE PRESIDENT: It is not due to any  
2 language difficulty as far as I can gather but due  
3 to his own attitude.

4 MR. CUNNINGHAM: I may misunderstand the  
5 entire situation; but I understood the witness pre-  
6 pared a statement in his own handwriting and when it  
7 came time to sign the final statement he hesitated  
8 for reasons of his own. Now that is my understanding  
9 and that is the reason I called the witness at this  
10 time. I am going to try to clarify the situation at  
11 noon and see what can be done about salvaging the  
12 witness' testimony.

13 We offer next defense document 202-H,  
14 another excerpt from the book of Mr. Powell further  
15 outlining the communist activities in China during  
16 the 20's. This document is presented for the purpose  
17 of establishing background on which other excerpts  
18 and other documents and testimony of supporting wit-  
19 nesses are based. I might say that Mr. Powell was a  
20 witness in this trial, as you well know, and testified  
21 on direct examination on other matters.

22 THE PRESIDENT: Brigadier Nolan.

23 BRIGADIER NOLAN: Defense document 202-H  
24 was rejected by the Tribunal when it was offered in  
25 evidence at page 18419 of the record.



1 MR. CUNNINGHAM: I submit that whether a  
2 witness testifies through excerpts from a book that  
3 he has written from information obtained upon the  
4 spot or whether or not he testifies from the witness  
5 stand is a matter of weight of the evidence given to  
6 what he says, and if what he says has a bearing,  
7 relates to the subject matter and controversy, then  
8 it should be given whatever weight is given to his  
9 testimony in the box proportionately.

10 THE PRESIDENT: Did you say this document  
11 was already tendered and rejected, Brigadier Nolan?

12 BRIGADIER NOLAN: Yes, your Honor, I did.

13 THE PRESIDENT: Do you admit that, Mr.  
14 Cunningham?

15 MR. CUNNINGHAM: The document was probably  
16 rejected in some other phase of the case as bearing  
17 upon some other matter but it is offered at this time  
18 for the bearing upon the question at issue in this  
19 case -- the growth of communism in China -- and I  
20 believe it is perfectly relevant and material and  
21 I can't see how it can be determinative because it  
22 was rejected in some other phase of the case not  
23 related to this particular topic.

24 THE PRESIDENT: By a majority the objection  
25 is upheld and the document rejected again.

1 MR. CUNNINGHAM: I believe that is the first  
2 time this has happened. Could we have a suggestion  
3 as to what the attitude of the Tribunal is concerning  
4 excerpts which have been rejected? Of course, many  
5 of them contained several matters and we can't segre-  
6 gate parts of an excerpt and we like to pick out  
7 certain parts which have bearing upon certain sub-  
8 jects and I would like to have a disposition on that.

9 THE PRESIDENT: I did not tell you you were  
10 wrong in tendering it again. You may have had good  
11 reason. As you say, there may have been something  
12 in it which is relevant now and was not relevant  
13 before.

14 MR. CUNNINGHAM: The reason I suggest that  
15 is because the next document falls in the same cate-  
16 gory and it is offered -- 202-I -- it is introduced  
17 for the purpose of showing difficulties which arose  
18 after the communist party obtained a foothold in  
19 China, especially when the communists tried to oust  
20 the Kuomintang and seize control of the government.  
21 This document is read in the light of recent develop-  
22 ments and the facts related serve to substantiate  
23 just cause for Japanese fears of the spread of commun-  
24 ism. These are offered as reports of personal exper-  
25 iences and observations of Mr. John B. Powell.

1 THE PRESIDENT: I am reminded by two of  
2 my colleagues that on behalf of the Bench I made  
3 this statement: that we admitted excerpts from  
4 Powell's book in so far as it recited objectively  
5 facts observed by the author; nothing more. That  
6 certainly represents my attitude but I do not know  
7 that it represents the attitude of all the Members  
8 of the Court.

9 MR. CUNNINGHAM: That is my understanding  
10 too, your Honor, that so long as the excerpt recites  
11 facts which bear upon the questions at issue, then  
12 it is admissible.

13 BRIGADIER NOLAN: Document No. 202-I, may  
14 it please the Tribunal, was offered in evidence at  
15 page 18416 of the record and rejected at page 18418.  
16 The objection was based on the ground that the docu-  
17 ment was irrelevant, possessed no probative value, and  
18 it will be seen from an examination of it that it does  
19 not set out facts within the knowledge of the author.  
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1 MR. CUNNINGHAM: I do not want to be  
2 placed in a position where I am boosting the value  
3 of one of the prosecution witnesses, but I certainly  
4 suggest that his testimony in what he observed and  
5 wrote should be given the same acceptance, although  
6 perhaps not the same weight, as what he said in the  
7 witness stand in a limited field.

8 An associate wishes me to remind the  
9 Tribunal that Mr. Powell has passed away in the  
10 meantime.

11 THE PRESIDENT: We have heard of his  
12 lamented death. All of us are aware of the fact.

13 By a majority the objection is upheld  
14 and the document rejected.

15 MR. CUNNINGHAM: I now offer defense  
16 document 202-Q-4 showing the collaboration between  
17 the forces of Chang Hsueh-liang and the communist  
18 groups as well as the famous Sian Incident in which  
19 Chiang Kai-shek was kidnapped by the young Marshal,  
20 which was the beginning of the relationship on the  
21 compromise basis between the communists and Chiang  
22 kai-shek.

23 We will have to drop, I guess, Q-4 for the  
24 time being on account of lack of distribution.

25 I ask that the Tribunal accept defense

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2 placed in a position where I am boosting the value  
3 of one of the prosecution witnesses, but I certainly  
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20 which was the beginning of the relationship on the  
21 compromise basis between the communists and Chiang  
22 kai-shek.

23 We will have to drop, I guess, Q-4 for the  
24 time being on account of lack of distribution.

25 I ask that the Tribunal accept defense

1 document No. 202-S-1. It is a short document which  
2 describes in some detail the Sian Incident.

3 THE PRESIDENT: Brigadier Nolan.

4 BRIGADIER NOLAN: We object to this document,  
5 sir, on the ground, first, that it is irrelevant; and,  
6 second, that it expresses the opinion of the author.  
7 It deals with the question of the enhancement of the  
8 prestige of a Chinese gentleman and I submit is  
9 irrevelant.

10 THE PRESIDENT: By a majority the Court  
11 upholds the objection and rejects the document.

12 MR. CUNNINGHAM: We next offer defense  
13 document 202-S-2, to show that communists were  
14 utilizing the efforts of available sympathizers to  
15 forward their movement in China and to further the  
16 widening of the breach between China and Japan.

17 THE PRESIDENT: Mr. Comyns Carr.

18 MR. COMYNS CARR: If it please the Tribunal,  
19 this document is, in the first place, objectionable  
20 on the same grounds on which others have been re-  
21 jected, namely, that it does not purport to record  
22 anything within the author's personal knowledge, but  
23 merely a report that he had received from an un-  
24 named source. At some stage, however, we desire to  
25 argue the much more general question whether matters



1 of Chinese internal politics, communism in China,  
2 and the relations between the Communist Party  
3 in China and the Kuomintang Party and the National  
4 Government, and their attitude toward Japan, can  
5 have any relevance whatever to the issue before  
6 this Tribunal.

7 THE PRESIDENT: If that argument is open  
8 on this document, Mr. Comyns Carr, why not put it now?

9 MR. COMYNS CARR: That is what I was going  
10 to ask your Honor for guidance about.

11 In our submission, and accepting entirely  
12 the ruling which the Court gave yesterday when it  
13 declined to make any pronouncement at the present  
14 time as to whether Japan had committed a breach of  
15 treaty in what is called the China Incident, or  
16 whether it had not, the issue still remains whether  
17 such a breach of treaty was committed or not. It  
18 follows, in our submission, that matters occurring  
19 within China can only be relevant if they justi-  
20 fied the hostile action taken by Japan and the  
21 invasion of China which followed on the Incident of  
22 July 7, 1937. Internal affairs in China cannot be  
23 relevant unless they could amount to such a justi-  
24 fication. In our submission, whether the Japanese  
25 Government favored communism in China or whether it

1 did not, they could not under any conceivable cir-  
2 cumstances be entitled to invade China in order to  
3 stamp out communism. Some of these documents, in-  
4 cluding this one, if it were admissible on other  
5 grounds, as we submit it is not, tend to suggest  
6 that the Communist Party in China was preparing  
7 hostilities against Japan, and was endeavoring to  
8 induce by various means the National Government of  
9 China to initiate such hostilities.

10 THE PRESIDENT: We invite you to continue  
11 your argument after lunch, Mr. Coryns Carr.

12 We will adjourn until half-past one.

13 (Whereupon, at 1200, a recess  
14 was taken.)  
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## AFTERNOON SESSION

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2 The Tribunal met, pursuant to recess, at  
3 1330.

4 MARSHAL OF THE COURT: The International  
5 Military Tribunal for the Far East is now resumed.

6 THE PRESIDENT: Mr. Comyns Carr.

7 MR. COMYNS CARR: Your Honor, when the Tri-  
8 bunal adjourned, I was arguing that the documents  
9 of which this is typical are irrelevant to any issue  
10 before this Tribunal on the ground that, in order to  
11 be relevant, they must show something which, if true,  
12 could be a justification for the invasion of China  
13 in order to show that it was not a breach of either  
14 the Nine Power Treaty or the Pact of Paris, or any  
15 other relevant treaty. And I was dividing the docu-  
16 ments into three categories: First, those which  
17 merely deal with communist activities within China  
18 which, in my submission, have nothing whatever to do  
19 with any other country; secondly, those which pur-  
20 port to show that the communists in China were en-  
21 deavoring to organize armed resistance to further  
22 Japanese advances in China; and thirdly, those which  
23 purport to suggest an intention on the part of the  
24 communists in China or elsewhere or, for that matter,  
25



1 of the Nanking Government, to open war upon Japan with  
2 the intention of recovering territory already lost.  
3 In our submission, none of those three could pos-  
4 sibly afford a justification for an invasion of  
5 China, and all are, therefore, irrelevant. But we  
6 recognize that there are degrees and that each cate-  
7 gory requires considering separately.

8 With regard to the second category, in my  
9 submission, it is almost as obvious as it is with  
10 regard to the first that mere preparations to resist  
11 aggression by force of arms cannot conceivably afford  
12 a justification for that aggression or convert it  
13 into something which could, in any proper use of  
14 language, be called self defense. But, even if  
15 evidence were produced in the third category, that  
16 is, showing an intention to open war upon Japan in  
17 order to recover lost territory, or for any other  
18 reason, in our submission, that still could afford  
19 no justification for beginning an invasion and is,  
20 therefore, irrelevant.

21 It has, unfortunately, often happened that  
22 there is, on one or both sides of a frontier, tension  
23 and ill feeling with regard to the people on the  
24 other side of the frontier. But that in itself is  
25 neither a crime nor a justification for attack.

1 The saying, "Attack is the best form of defense" may  
2 be an excellent military maxim, but it has no appli-  
3 cation to the question, who is the aggressor on an  
4 outbreak of war? That question always remains:  
5 Who effectively began it? Or, if it began in some  
6 trifling frontier incident, who effectively took  
7 advantage of that to create a large scale war?

8 For those reasons we submit that evidence  
9 merely tending to show a greivance or a state of  
10 tension or apprehension in the minds of the Japanese  
11 can have no bearing upon the real issue and is a  
12 waste of the time of this Tribunal.

13 THE PRESIDENT: Mr. Cunningham.

14 MR. CUNNINGHAM: It appears, your Honors,  
15 that prosecution is now attempting to have a vital  
16 issue of this case decided in the middle of the case  
17 by objecting to the introduction of evidence that  
18 raises the same question which was decided yesterday  
19 by the Tribunal on another one of our vital issues,  
20 the question of boycott.

21 It appears that this is one of the defenses  
22 that are proposed and contended by the defense, that  
23 the conditions in China existing at the time were a  
24 matter of vital concern to the security of the peace  
25 of Asia as well as security to the peace of Japan.

1 It is our contention that the interests of Japan  
2 were vested in China and were entitled to protection,  
3 and that the avowed declaration of the communists of  
4 China to drive out the Japanese interests in Japan  
5 was a virtual declaration of war against Japan.

6 It is our contention that the growth of  
7 communism in China and its spread was a matter of  
8 vital concern to the Japanese nation and to the  
9 other nations of East Asia and was rightfully the  
10 subject of fear on the part of the Japanese to com-  
11 bat in the best manner in which they could.

12 It is our purpose to show that the activity  
13 of the communists in China contributed greatly to the  
14 cause of the conflict between the Chinese and the  
15 Japanese forces.

16 We will show that the Japanese were justi-  
17 fied in their fears of the spread of communism and  
18 the interference with the peace of Asia as a result  
19 of its spread.

20 We will show that the Anti-Comintern Pact  
21 was justifiable, and that is one of the offenses  
22 charged by the prosecution against certain of the  
23 defendants, that they took part in the execution of  
24 the Anti-Comintern Pact.

25 We believe that third parties are justified



1 in being greatly concerned about the development  
2 and internal conditions of their neighbor countries  
3 especially when different social systems are involved,  
4 especially when the advocates of the social system  
5 declare that Japan is the avowed enemy of that sys-  
6 tem.

7 We submit that this question of the develop-  
8 ment of communism in China is one of the vital issues  
9 involved in this case and is one of the reasons why  
10 Japan took the action she did, and in justification of  
11 her program of self defense it is our desire to show  
12 evidence that her fears were justified and that she  
13 took action accordingly in good faith.

14 The prosecution has charged that the Japan-  
15 ese are guilty of waging aggressive war. The ul-  
16 timate question is whether or not the Japanese waged  
17 a defensive war, protecting their interests, their  
18 vital interests in a neighboring country, or whether  
19 or not it was a planned, aggressive war according to  
20 their claim.

21 In the light of what has been charged, and  
22 in the light of what has happened, I cannot possibly  
23 see that this issue can be eliminated but what we  
24 should be permitted to put on all of the evidence we  
25 have available to show the real condition in Japan

1 and the real difficulties which were presented by  
2 the development of the communist idea in her neigh-  
3 boring country.

4 We contend that the Japanese were defending  
5 situations as they arose, and one of the situations  
6 was the communistic development; and the prosecution  
7 has presented that the Japanese had planned before-  
8 hand an aggressive campaign. It is a vital issue.

9 Mr. Logan, one of my associates, has an  
10 observation on this, and it is very difficult for  
11 him to transmit it to me at the present time. I  
12 wonder if he would be permitted to express it him-  
13 self.

14 THE PRESIDENT: I think the Tribunal would  
15 be pleased to hear him on such an important matter.

16 MR. LOGAN: I just wanted to point out, if  
17 the Tribunal please, that Mr. Carr, in his argument,  
18 confined himself to three items which he said were  
19 immaterial to the beginning of an invasion. In  
20 other words, he said, if what we intend to prove is  
21 true, that there would be no justification for an  
22 invasion in China.

23 Well, in the first place, this assumes that  
24 this Tribunal has already decided that there was an  
25 invasion of China, which is one of the issues to be

1 determined by the Tribunal; and he also overlooks the  
2 fact that, not only do these communistic activities  
3 in China exist -- did they exist before the beginning  
4 of the incident, but they also occurred during the  
5 entire period of time. And, since these incidents  
6 occurred during the entire period of time, they are  
7 material to the charge in the Indictment as to  
8 whether or not these accused conspired to, and did,  
9 wage aggressive war. If this evidence proves, as we  
10 believe it does, that incidents were created and  
11 stirred up by communistic activities, the activities  
12 of the communists would be material to that charge  
13 in the Indictment. And by just confining the argu-  
14 ment to the events which took place prior to the  
15 commencement of the incident, the prosecution has  
16 overlooked the fact that these incidents and the  
17 activities of the communists continued during the  
18 entire period of time, and, therefore, they are  
19 material.

20 I might also point, it was Japan's policy to  
21 try and settle and localize these incidents, and the  
22 activities of the communists, it will be shown, pre-  
23 vented the settlement of the incidents and stirred up  
24 new ones.  
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1 MR. COMYNS CARR: Your Honor, just three  
2 points which have been raised which I think are new,  
3 and I would ask to be heard a moment in reply upon  
4 them.

5 First of all, with regard to the Anti-  
6 Comintern Pact, that is not the subject of any specific  
7 charge in this Indictment. It is alleged as part of  
8 the conspiracy between Japan, Germany and Italy;  
9 and the points of the prosecution's case with regard  
10 to it is that it was not merely what it purported to  
11 be but a preparation for the ultimate waging of war  
12 by those three countries, resulting in the Pacific  
13 War.

14 The question whether there was or was not  
15 communist activity in China could have no bearing  
16 upon that

17 The second point was raised by my friend,  
18 Mr. Logan, when he said my argument assumed that  
19 there was a Japanese invasion of China. It assumes  
20 nothing of the kind. Of course, if the defense can  
21 produce evidence to disprove our evidence on that  
22 point, the whole of these questions we are now dis-  
23 cussing would never arise at all; and this evidence  
24 could not possibly throw any light upon that ques-  
25 tion.

1           The last point was also raised by my friend,  
2 Mr. Logan, when he said we had overlooked the fact  
3 that some of this evidence will extend to the period  
4 after the outbreak of what is called the China Inci-  
5 dent. In my submission, that is equally irrelevant.  
6 The fact that the Chinese Communist Armies collabor-  
7 ated with those of the National Government in resist-  
8 ing the invasion can, in my submission, throw no  
9 light whatever on the question whether the invasion  
10 was of an aggressive character or not.

11           Finally, I would like to remind the Tribunal  
12 that this argument, which has become rather extensive,  
13 is entirely independent of the objections taken to this  
14 particular document as being based merely upon reports  
15 not within the writer's knowledge.

16           THE PRESIDENT: The last is an additional  
17 objection. The Members of the Tribunal will confer  
18 for some minutes.

19           (Whereupon, at 1410, a recess was  
20 taken until 1505, after which the proceed-  
21 ings were resumed as follows:)  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: We have our decision on the  
4 point argued by Mr. Comyns Carr, Mr. Cunningham and  
5 Mr. Logan.

6 The Tribunal is of the opinion that no  
7 evidence of the existence or spread of communism or  
8 of any other ideology in China or elsewhere is  
9 relevant in the general phases. Evidence of an  
10 actual attack on Japanese nationals or property by  
11 Chinese communists or any other Chinese may be given  
12 in justification of Japan's acts.

13 When the accused come to give evidence, they  
14 may tender their fear of communism in explanation of  
15 their acts.

16 That disposes of one ground of objection.  
17 There are others upon which we must give our decision.

18 That decision covers the last document ten-  
19 dered, which is rejected, the objection being upheld.

20 The decision is a majority decision.

21 Mr. Cunningham.

22 MR. CUNNINGHAM: I can't see right off from  
23 examining the documents to come, just how I can  
24 eliminate the documents which pertain to the particular  
25 activities of communists as separated from the other



Chinese and the Chinese nationalists.

1 THE PRESIDENT: Well, tender or withhold the  
2 documents in accordance with your understanding of our  
3 decision.

4 MR. CUNNINGHAM: The first defense document,  
5 959-C, is a report of the Asia Bureau of the Ministry  
6 of Foreign Affairs concerning the organization and  
7 activities of the communist wing.

8 THE PRESIDENT: Activities against Japanese  
9 nationals or property, or just activities?

10 MR. CUNNINGHAM: This document tends to jus-  
11 tify the fears of the Japanese concerning foreign  
12 influences which were threatening her security. Now,  
13 I would have to peruse the document to determine that  
14 question which you propose.

15 From the observation I can make, it is a  
16 general outline of the activities of the communists  
17 and Comintern in China over a period of time -- 1932.

18 THE PRESIDENT: Apparently it does not refer  
19 to attacks on Japanese nationals or property.

20 MR. CUNNINGHAM: Well, I can't determine that  
21 from just reading it over now, your Honor. Unless it  
22 is the middle of page 4--

23 THE PRESIDENT: Well, if you have any doubt,  
24 tender it and we will hear you and Mr. Carr later.

1 MR. COMYNS CARR: Your Honor, I have perused  
2 this document. In my submission, it is quite clearly  
3 within the ruling of the Tribunal and should be  
4 excluded. There are many other objections to it,  
5 besides. But it is sufficient if I satisfy your Honor  
6 of that. The only reference to Japan, as far as I  
7 know, is on page 4, and that merely says that the  
8 Communist Party in Japan and in a number of other  
9 countries was placed under the control of an individual  
10 named Noulens.

11 MR. CUNNINGHAM: Well, your Honor, these  
12 matters are so closely interwoven, whether it is  
13 Chinese communists or Chinese nationalists or Kuomintang  
14 who are violating the rights of the Japanese, it is  
15 very difficult to determine that. This is a general  
16 review as of a certain date.  
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1           MR. COMYNS CARR: Your Honor, there is nothing  
2 in it about violating anybody's rights. It is merely  
3 about the organization of the Communist Party in various  
4 countries.

5           THE PRESIDENT: Well, are you going to tender  
6 it, Mr. Cunningham?

7           MR. CUNNINGHAM: I have offered defense docu-  
8 ment 959-C, Report of the Asia Bureau of the Ministry  
9 of Foreign Affairs.

10          THE PRESIDENT: Are you objecting, Mr. Carr?

11          MR. COMYNS CARR: Yes. I don't know if your  
12 Honor wants to hear the other objections. In my sub-  
13 mission that one is sufficient. Quite briefly they  
14 are that this book from which it purports to be an  
15 extract, although there is no certificate to that ef-  
16 fect, is a mere compilation. It does not profess to  
17 contain any matter within the knowledge of the writer.  
18 The third objection is that the document only purports  
19 to go up to 1932, and it is difficult to see what rele-  
20 vance that could have to the China Affair in 1937.  
21 But the main objection is the first one.

22          MR. CUNNINGHAM: I submit that this offers  
23 background material for the further development of the  
24 Communist activities within China and the underlying  
25 causes of the difficulties between the two nations.



1 I would like to offer 959 as a basic document for  
2 identification, and this an excerpt from it.

3 THE PRESIDENT: Well, tender 959 for indenti-  
4 fication.

5 CLERK OF THE COURT: Defense document 959  
6 will receive exhibit No. 2513 for identification only.

7 (Whereupon, the document above  
8 referred to was marked defense exhibit  
9 No. 2513 for identification.)

10 THE PRESIDENT: By a majority, the Tribunal  
11 upholds the objection and rejects the document.

12 MR. CUNNINGHAM: I now offer defense document  
13 959-D as evidence of the state of the development of  
14 Communist activities in China as of December 1932,  
15 which is an official publication of the Bureau of  
16 Asiatic Affairs, showing conditions generally, omitting  
17 the tables and reading certain specific pages from the  
18 excerpt.

19 MR. COMYNS CARR: This document, your Honor,  
20 is an extract from the same book and is open to all  
21 the same objections, and to the further objection that  
22 it consists almost entirely of an extract or quotation  
23 from a magazine called "The Anti-Communism Semi-Monthly."  
24 It deals with alleged Communist outrages against other  
25 Chinese, not against Japanese.

1 MR. CUNNINGHAM: The same observation as on  
2 the other document.

3 THE PRESIDENT: By a majority, the Tribunal  
4 upholds the objection and rejects the document.

5 MR. CUNNINGHAM: I now present defense docu-  
6 ment No. 959-E. This is an excerpt from No. 5, describ-  
7 ing the May 30th Incident, the fourth item, the "Red  
8 Movement," the second section, the first chapter of  
9 "Outline of Communist Movements in China and Manchuria"  
10 compiled from the materials collected by the Asiatic  
11 Bureau of the Japanese Foreign Office.

12 It is intended to show by this document that  
13 the Comintern was employing very clever methods in  
14 bolshevizing China and Japan and was planning fearful  
15 intrigues by buying up leaders and journalists with  
16 the use of colossal funds.

17 MR. COMYNS CARR: Your Honor, this document  
18 is, if possible, more objectionable than either of the  
19 other two. It is an extract from the same book. It  
20 deals with strikes in Shanghai, labor strikes in  
21 Shanghai between 1918 and 1925. The only reference to  
22 Japan in it is that out of 117 strikes mentioned, 39,  
23 or approximately one-third, were directed against firms  
24 managed by Japanese. And approximately half of the  
25 document consists of an anonymous letter addressed to

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1 an unnamed person.

2 THE PRESIDENT: On page 7 it is stated the  
3 Japanese plants were selected solely for convenience  
4 sake; but on page 14 there is a reference to Japanese  
5 secret agencies.

6 MR. COMYNS CARR: Page 14, your Honor, is  
7 part of the anonymous letter.

8 THE PRESIDENT: Mr. Cunningham.

9 MR. CUNNINGHAM: I think we have emphasized  
10 perhaps the points that were involved in this document.  
11 We cannot expect to take a document like 959-E and  
12 isolate it from the rest of those that have gone be-  
13 fore and separate it from those that are to follow  
14 and expect it to stand upon its own feet as a complete  
15 story.

16 THE PRESIDENT: By a majority the Tribunal  
17 upholds the objection and rejects the document.

18 MR. CUNNINGHAM: As an excerpt from the  
19 same document I now present defense document No. 959-F.  
20 It is intended to show by this document that the  
21 various activities of the Soviet communist party by  
22 means of cruel intrigues which were planned for  
23 bolshevization of North Manchuria and were conducted  
24 through diplomatic organs of its own country.

25 THE PRESIDENT: Mr. Comyns Carr.



1 MR. COMYNS CARR: Your Honor, this extract  
2 from the same book is equally objectionable. It is a  
3 collection of reports of gossip about communist activ-  
4 ities in Manchuria almost entirely before September  
5 1931, and the only reference that I can find in it  
6 to any hostile activities by anybody were said to have  
7 been directed against the Chinese army in 1929.

8 THE PRESIDENT: Mr. Cunningham.

9 MR. CUNNINGHAM: I urge the acceptance of  
10 this document for the same reason that the others  
11 were offered.

12 THE PRESIDENT: The Tribunal upholds the  
13 objection and rejects the document. That is a majority  
14 decision.

15 MR. CUNNINGHAM: I now present defense  
16 document 959-G. It is intended to show by this docu-  
17 ment the organization of the North Manchuria committee  
18 established in the Soviet consulate in Harbin and the  
19 secret activities of the Soviet communist party members  
20 in Manchuria.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: I object to this document,  
23 your Honor, for the same reasons. The first part of  
24 it deals with the alleged efforts in some unnamed year  
25 of a Korean communist to blow up some bridges. The

1 second part deals with recent organization of Soviet  
2 communist party in Manchuria, but as no dates are  
3 given one cannot say how recent, except one -- something  
4 mentioned in 1930. It is purely a detailed descrip-  
5 tion of an organization and as far as I have been able  
6 to trace does not contain anything to show any hostile  
7 action against anybody apart from the Korean gentle-  
8 man's attempt to blow up the bridge which was unsucces-  
9 ful.

10 I should add with regard to the last matter,  
11 your Honor, that as the source of the information is  
12 not given, the source of this story, the book in my  
13 submission gives it no probative value whatsoever even  
14 as to that story supposing it were relevant.

15 MR. CUNNINGHAM: I suggest that this docu-  
16 ment comes under a little different classification  
17 than the others which have been rejected. The first  
18 line will indicate that it bears more light upon this  
19 issue between Japan and China and the involvement of  
20 the communist activity than any of the others. I  
21 suggest that this comes under the direct ruling which  
22 you made just a few minutes ago about the qualification  
23 of documents under the motion or objection made by the  
24 prosecutor.

25 THE PRESIDENT: By a majority the Tribunal

1 1016 to prove the events leading up to the issuance  
2 of the August First Declaration and the December  
3 Resolution of 1935 and the communist program against  
4 the Japanese. The facts set out in this document are  
5 the basis for the conduct of some of these accused.

6 THE PRESIDENT: Mr. Comyns Carr.

7 MR. COMYNS CARR: Your Honor, we object to  
8 this document which is an extract from still another  
9 book and the only certificate about it is that it is  
10 written by two Japanese authors, published in November  
11 1946 by the firm who gives the certificate. The  
12 greater part of it consists of a quotation from still  
13 another book as to which there is no certificate at  
14 all. It is merely the history of the communist party  
15 and the Comintern. In our submission it is open to  
16 every conceivable objection.

17 MR. CUNNINGHAM: The document is offered to  
18 throw another light upon the same question of the  
19 activities and takes you down to 1935, which is near  
20 the vital time in the development of the communist  
21 activity in China. It shows the basis of the frame  
22 of mind and the attitude of the Japanese towards this  
23 question as of the time.

24 THE PRESIDENT: By a majority the Tribunal  
25 upholds the objection and rejects the document.



1 upholds the objection and rejects the document.

2 Most of the Judges think the first part of the docu-  
3 ment has no probative value even if it did come under  
4 the general ruling.

5 MR. CUNNINGHAM: I now offer defense document  
6 No. 960-G which is a Foreign Ministry document showing  
7 the history of the Chinese communist party and its  
8 policy towards China and the progress in the northern  
9 attack and the separation of the nationalist party  
10 from the communist party.

11 MR. COMYNS CARR: Your Honor, this is an  
12 extract from a different book called, "The History  
13 of the Chinese Communist Party," which is not even  
14 certified to have been compiled by the Foreign  
15 Ministry but merely to be in their custody. The  
16 extract consists of gossip from an unnamed source  
17 about the opinion of various leaders in Moscow with  
18 regard to the same strike of laborers in Shanghai in  
19 1925 which was referred to in a document already  
20 rejected.

21 MR. CUNNINGHAM: It is just a short document  
22 which most of you have probably looked over already.

23 THE PRESIDENT: By a majority the Tribunal  
24 upholds the objection and rejects the document.

25 MR. CUNNINGHAM: I now offer defense document

1 1016 to prove the events leading up to the issuance  
2 of the August First Declaration and the December  
3 Resolution of 1935 and the communist program against  
4 the Japanese. The facts set out in this document are  
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19 activities and takes you down to 1935, which is near  
20 the vital time in the development of the communist  
21 activity in China. It shows the basis of the frame  
22 of mind and the attitude of the Japanese towards this  
23 question as of the time.

24 THE PRESIDENT: By a majority the Tribunal  
25 upholds the objection and rejects the document.

1 MR. CUNNINGHAM: I now offer defense  
2 document 1015, which is an excerpt from the book,  
3 "Red Star Over China," by one of America's greatest  
4 journalists who reported on the international con-  
5 ditions in China as a result of his journeys, ob-  
6 servations, and inquiries. This is just one of  
7 many detailed reports which are available to show  
8 the development of the anti-Japanese movement in  
9 China and the march of the communists and national-  
10 ists towards destruction of Japanese-Sino friendly  
11 relations. We offer this document for whatever  
12 probative value it has and ask the Court to reserve  
13 its judgment on the weight of its value until after  
14 the document has been read. It serves as a basis  
15 for consideration of many facts on important issues  
16 involved and will conserve considerable documenta-  
17 tion of material from other sources.

18 THE PRESIDENT: Mr. Comyns Carr.

19 MR. COMYNS CARR: Your Honor, we object  
20 to this document on the same grounds as many other  
21 journalists' books have been rejected, and also on  
22 the ground it is irrelevant and of the same character  
23 as the documents recently rejected by the Court. A  
24 great deal of it is about the author himself, and  
25 then follows a section giving his opinion about basic



1 communistic policies. Then it relates a conversa-  
2 tion which he had with a gentleman named Mao Tse-  
3 tung in 1926. That appears to be the greater part  
4 of it, to occupy the greater part of the document.  
5 In our submission it has no probative value, and the  
6 whole subject matter of it is irrelevant.

7 THE PRESIDENT: Mr. Cunningham.

8 MR. CUNNINGHAM: There is nothing further,  
9 your Honor.

10 THE PRESIDENT: By a majority the Tribunal  
11 upholds the objection and rejects the document.

12 MR. CUNNINGHAM: We now offer defense  
13 document No. 739, which is an article from the Japan  
14 Chronicle concerning Soviet protests over the capture  
15 of Mrs. Boredin, which name is mentioned often in  
16 Communist Party activities and the development of  
17 the Communist Party in China, and ties in with later  
18 documentation.

19 THE PRESIDENT: Mr. Conyns Carr.

20 MR. CONYNS CARR: The date of this news-  
21 paper extract is March, 1927, and it purports to  
22 show a protest by the Soviet Embassy against this  
23 lady's arrest by Chinese troops. It is a mere news-  
24 paper article of the kind which the Tribunal has  
25 frequently rejected, and the subject matter, in our

1 submission, is wholly irrelevant.

2 MR. CUNNINGHAM: I present but do not urge  
3 the document, particularly.

4 THE PRESIDENT: The Tribunal upholds the  
5 objection and rejects the document.

6 MR. CUNNINGHAM: Defense document 903 is  
7 offered for the purpose of showing the conditions  
8 prior to the **Sian** Incident and the attitude of  
9 Chiang Kai-shek toward communists. It also reports  
10 the activities of the communist bandits who had no  
11 respect for law and order. This document is a  
12 telegram from Consul-General **MIURA** to Foreign  
13 Minister **HIROTA**, is an official document, and con-  
14 tains considerable material on the activities which  
15 were controlling the Japanese governmental policies  
16 at the time.

17 THE PRESIDENT: Mr. Conyns Carr.

18 MR. COLYNS CARR: Your Honor, the source  
19 of this document is more respectable than that of  
20 the others, but the contents are equally objection-  
21 able, in our submission. It consists merely of  
22 gossip which the Consul had collected from various  
23 sources as to communistic activities within China  
24 and speculations as to the probable future activi-  
25 ties of **Chiang Kai-shek**. There is no reference in

1 it t anything connected with Japan or the Japanese.

2 MR. CUNNINGHAM: I submit that this docu-  
3 ment has some probative value, that it bears on the  
4 questions covered by some of the documents that have  
5 been rejected; but this is an official declaration,  
6 and it involves one of the accused in the dock,  
7 which gives it more respect.

8 THE PRESIDENT: By a majority the Tribunal  
9 upholds the objection and rejects the document.

10 It is now four o'clock. We will adjourn  
11 until half-past nine tomorrow morning.

12 (Whereupon, at 1600, an adjourn-  
13 ment was taken until Wednesday, 30 April  
14 1947, at 0930.)  
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